

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MICHAEL BRANNAN, *et al.*,

Plaintiffs,

v.

NORTHWEST PERMANENTE, P.C. *et al.* ,

Defendants.

Case No. C05-5157FDB

ORDER GRANTING PLAINTIFFS'
MOTION TO STRIKE
DEFENDANTS' EXPERT WITNESS
DR. JOHN B. COOMBS

Plaintiffs move to strike the testimony of designated Defense Expert Witness Dr. John B. Coombs, a practicing primary care physician, as an improper and untimely sur-rebuttal witness to Plaintiffs' Dr. Howard Miller, and whose testimony is also duplicative of Defendants' expert Dr. Anne Nedrow, a primary care practitioner.

Plaintiffs argue that once Dr. Nedrow's report was submitted on or about May 16, 2006, Plaintiffs thereafter timely submitted Dr. Miller's rebuttal on June 15, 2006. Then, on or about July 28, 2006 (three weeks after the rebuttal expert deadline of July 5, 2006) Defendants disclosed that they had retained John B. Coombs, M.D. as a rebuttal witness to Dr. Miller. Plaintiffs submit that Dr. Coombs report reiterates and restates the opinions of Dr. Nedrow. Plaintiffs also note that the Court's Minute Order (see Dkt. 58) does not contemplate sur-rebuttal witnesses nor did Defendants


1 seek a stipulation or leave of court to name a sur-rebuttal witness.

2 Defendants argue that Dr. Coombs rebuts Dr. Miller's criticisms of Drs. Lin and Rothbard
3 and adds new information that is not duplicative. Defendants also assert that they requested and
4 Plaintiffs agreed to accept Dr. Coombs' report on July 20, 2006, a point that Plaintiffs emphatically
5 dispute.

6 Dr. Coombs testimony must be stricken under the circumstances that he is designated as a
7 sur-rebuttal witness to Dr. Miller, who is the rebuttal witness to Dr. Nedrow. There was no
8 agreement nor leave of court to name a sur-rebuttal witness.

9 ACCORDINGLY, IT IS ORDERED: Plaintiffs' Motion To Strike Defendants' Expert
10 Witness Dr. John B. Coombs [Dkt. # 79] is GRANTED and Dr. Coombs is precluded from
11 providing any expert testimony in this case.

12 DATED this 21st day of September, 2006.

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15 FRANKLIN D. BURGESS
16 UNITED STATES DISTRICT JUDGE
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